TAN YIN YEN v. PUBLIC PROSECUTOR

[F.C. — (Suffian Ag. C.J., Gill and Ong Hock Sim F.JJ.) September 3, 1973]

[Kuala Lumpur — Federal Court Criminal Appeal No. 7 of 1973]

Courts of Judicature Act, 1964, s. 66 — Questions of law referred to the Federal Court should be questions that are of public interest.

Criminal Procedure — Reference to Federal Court — Questions of law — Courts of Judicature Act, 1964, s. 66.

In this case the appellant had been convicted and fined by a magistrate for an offence under the Fisheries Act, 1963 and the Fisheries (Maritime) Regulations. Subsequently an order was made by a different magistrate for the forfeiture of his fishing boat and nets. He appealed to the High Court which confirmed the order of confiscation. The learned appellate judge, on the application of the appellant, referred the following question of law to the Federal Court:

> "Whether in the circumstances of this case the magistrate had properly exercised his discretion in making an order of confiscation of the fishing vessel and the net under section 16(1) of the Fisheries Act, No. 8 of 1963?"

At the hearing of the reference the learned Deputy Public Prosecutor agreed that the order of confiscation was a nullity.

Held: questions of law which may be referred to the Federal Court under section 66 should not be questions that are of personal interest only to the accused or to the Public Prosecutor but should be questions that are of public interest. It would be better if the High Court were to exercise their discretion under section 66 of the Courts of Judicature Act sparingly, so that references are not used as an indirect way of appealing against matters that under the law have been finally determined by the High Court.

The following authorities were cited in arguments: *Evans* [1937] 2 All E.R. 646, 650 & 654 and *Ward* v. *James* [1965] 1 All E.R. 563, 570.

FEDERAL COURT.

S. Appaduray for the appellant.

Gunn Chit Tuan (Deputy Public Prosecutor) for respondent.

Suffian Ag. C.J. (delivering oral judgment of the Court): Tan Yin Yen pleaded guilty to a charge under rule 2(1)(b), Fifth Schedule to the Fisheries (Maritime) (Amendment) Regulations, 1971, and section 13(1) of the Fisheries Act No. 8 of 1963, and was convicted and fined. Thereafter an inquiry was held not by the same magistrate who had dealt with him but by another, who ordered his fishing boat and one of his fishing nets forfeited. He appealed and the High Court confirmed the order of confiscation. On his application the learned appellate judge referred to us under section 66 of the Courts of Judicature Act the following question of law:

"whether in the circumstances of this case the magistrate had properly exercised his discretion in making an order of confiscation of [the fishing vessel and the net] under section 16(1) of the Fisheries Act, No. 8 of 1963."

We refrain from answering the question because the learned Deputy Public Prosecutor who appears for the Public Prosecutor says that the order of confiscation was a nullity and undertakes to bring this matter to the relevant authority with a view to the release to Tan Yin Yen of the articles improperly confiscated which it is stated are still with the police.

It is to be observed that questions of law which may be referred to us under section 66 should not be questions that are of personal interest only to the accused or the Public Prosecutor, but should be questions that are of *public* interest, and it seems to us better if the High Court were to exercise their discretion under section 66 sparingly, so that the references are not used as an indirect way of appealing against matters that under the law have been finally determined by the High Court.

The court refrained from answering.

Solicitors: *Ten Chin Yang.*

ISMAN BIN OSMAN v. GOVERNMENT OF MALAYSIA

[O.C.J. — (Sharma J.) September 12, 1973]

[Ipoh — Civil Suit No. 506 of 1968]

Administrative Law — Dismissal of police constable by Chief Police Officer — Right to be heard — Purported delegation of powers of Police Force Commission — Whether Commission has power to delegate its functions in so far as they relate to the dismissal or reduction in rank of public servant — Federal Constitution, arts. 132(2A), 135(1), 140(6)(b) and 144(6).

In this case the plaintiff, a police constable, was dismissed by the Chief Police Officer, Perak. He had been convicted of the offence of permitting his car to be used as a public service vehicle without licence and after his conviction he was informed that his dismissal was contemplated and he was told that if he wished to make any representations he should do so in writing to the Chief Police Officer. The plaintiff sent in a letter asking that he be reemployed but the Chief Police Officer decided to dismiss him. The Chief Police Officer purported to act under the powers given by the Police Force Ordinance. The Police Force Commission had purported to delegate its functions under article 140(1) of the Constitution, to the Chief Police Officer.

Held: (1) the Police Force Commission has no power to delegate its functions in so far as they relate to the dismissal or reduction in rank of a public servant;

(2) the Chief Police Officer was in fact not acting under any delegation of authority by the Police Force Commission when he dismissed the plaintiff;

(3) the dismissal from service of the plaintiff in this case was therefore null and void and inoperative.

Cases referred to:

(1) *B. Surinder Singh Kanda* v. *Government of the Federation of Malaya* [1962] M.L.J. 169.
(2) *Board of Education* v. *Rice* [1911] A.C. 179, 182.
(3) *Ceylon University* v. *Fernando* [1960] 1 W.L.R. 223; [1960] 1 All E.R. 631.
(4) *Re Gregson* (1894) 70 L.T. 106.
(5) *Rex* v. *Bodmin Justices* [1947] K.B. 321.
(6) *Goold* v. *Evans* [1951] 2 T.L.R. 1189.
(7) *Rex* v. *Architects Registration Tribunal* [1945] 2 All E.R. 131.
(8) *King* v. *Tribunal of Appeal under the Housing Act, 1919* [1920] 3 K.B. 334.
(9) *Lachmi Narain Marwari & others* v. *Balmakund Marwari and another* 51 I.A. 321.
(10) *Ruth* v. *Clarke* (1890) 25 Q.B.D. 391, 395.
(11) *Gordon Dadds & Co.* v. *Morris* [1945] 2 All E.R. 616, 621.
(12) *Vine* v. *National Dock Labour Board* [1956] 2 All E.R. 939.
(13) *Baber* v. *Manchester Hospital Board* [1958] 1 All E.R. 322.
(14) *Ridge* v. *Baldwin* [1964] A.C. 41.
(15) *Malloch* v. *Aberdeen Corp.* [1971] 2 All E.R. 1278.
(16) *McCleeland* v. *Northern Ireland General Health Services Board* [1957] 1 W.L.R. 594.
(17) *Rengachari* v. *Secretary of State* (1936-37) 64 I.A. 40, 53.
(18) *Terrell* v. *Secretary of State for the Colonies* [1953] 2 Q.B. 482.